IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 57 OF 2005.

Shri Sadanand B. Poojary and
another. ... Appellants.

V/s.

Simla Complex Co-op. Hsg.
Soc. Ltd. and others. ... Respondents.

R.D.Suryavanshi for the appellants.

R.S.Apte for the respondents No.10.

CORAM : A.S.Oka, J.

DATED : 24th January, 2005

P.C. :

. Heard learned counsel appearing for the parties.

2. The challenge in this appeal is to the order dated 3rd January, 2005 passed by learned trial Judge. By the impugned order, an application made by the appellants/plaintiffs for temporary injunction has been rejected.

3. Learned counsel appearing for the appellants submitted that as the suit filed by the appellants is pending in the trial Court and as there are arguable questions the learned trial Judge ought to have protected the suit structure till the disposal of the suit. He has invited my attention to the

application dated 9th December, 2004 made by appellant No.1 to the Assistant Commissioner of Mira-Bhayandar Municipal Corporation. He submitted that appellant No.1 has applied for regularisation of the offending structure.

4. I have considered the submissions. Admittedly, the offending structure has been constructed without prior permission from the competent authority. There is no application made in the prescribed form by the appellants for regularisation of the offending structure. In view of this position, learned trial Judge has declined to grant discretionary order of temporary injunction in favour of the appellants. If the structure in dispute is unauthorised, no fault can be found with the trial Judge when he declined to grant temporary injunction in favour of the appellants.

. There is no merit in this appeal. The appeal is dismissed with no order as to costs.

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